

EXHIBIT 11

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES,) 1:23-cv-00108-LMB-JFA
et al.,)
)
Plaintiffs,)
)
vs.)
)
GOOGLE LLC,)
)
Defendant.)

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VIDEOTAPED DEPOSITION OF

COLONEL LENNOX MORRIS

September 1, 2023

9:06 a.m.

Job No. CS6074135

Reported by: Bonnie L. Russo

Veritext Legal Solutions

800-567-8658

973-410-4098

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<p>1 Videotaped Deposition of Colonel Lennox Morris</p> <p>2 held at:</p> <p>3</p> <p>4</p> <p>5</p> <p>6 Paul Weiss Rifkind Wharton & Garrison, LLP</p> <p>7 2001 K Street, N.W.</p> <p>8 Washington, D.C.</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Pursuant to Notice, when were present on behalf</p> <p>19 of the respective parties:</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 I N D E X</p> <p>2 EXAMINATION OF COLONEL LENNOX MORRIS PAGE</p> <p>3 BY MS. GOODMAN 8</p> <p>4 293</p> <p>5 BY MR. McBIRNEY 293</p> <p>6</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 Exhibit 63 E-Mail dated 4-25-22 178</p> <p>Attachment</p> <p>10 ARMY-ADS-0000329948-970</p> <p>11 Exhibit 87 E-Mail Chain dated 3-10-22 52</p> <p>Attachment</p> <p>12 ARMY-ADS-0000070535-547</p> <p>13 Exhibit 88 E-Mail dated 10-21-21 98</p> <p>Attachment</p> <p>14 ARMY-ADS-0000177268-490</p> <p>15 Exhibit 89 E-Mail dated 3-15-22 160</p> <p>Attachment</p> <p>16 ARMY-ADS-0000135957-958</p> <p>17 Exhibit 90 E-Mail Chain dated 9-30-22 196</p> <p>Attachment</p> <p>18 ARMY-ADS-0000186428-431</p> <p>19 Exhibit 91 E-Mail dated 9-24-21 207</p> <p>Attachment</p> <p>20 ARMY-ADS-0000179830-831</p> <p>21 Exhibit 92 E-Mail Chain dated 4-11-22 215</p> <p>Attachment</p> <p>22 ARMY-ADS-0000060557-559</p>
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<p>1 APPEARANCES:</p> <p>2 On behalf of the Plaintiffs:</p> <p>3 JIMMY McBIRNEY, ESQUIRE</p> <p>4 CHASE PRITCHETT, ESQUIRE</p> <p>5 ALVIN CHU, ESQUIRE</p> <p>6 KATHERINE E. CLEMONS, ESQUIRE (Via Remote)</p> <p>7 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>8 450 Fifth Street, N.W., Suite 700</p> <p>9 Washington, D.C. 20530</p> <p>10 jimmy.mcbirney@usdoj.gov</p> <p>11 chase.pritchett@usdoj.gov</p> <p>12 alvin.chu@usdoj.gov</p> <p>13 katherine.clemons@usdoj.gov</p> <p>14 On behalf of the Defendant:</p> <p>15 MARTHA L. GOODMAN, ESQUIRE</p> <p>16 LEAH HIBBLER, ESQUIRE</p> <p>17 PAUL, WEISS, RIFKIND,</p> <p>18 WHARTON & GARRISON, LLP</p> <p>19 2001 K Street, N.W.</p> <p>20 Washington, D.C. 20006</p> <p>21 mgoodman@paulweiss.com</p> <p>22 lhibbler@paulweiss.com</p> <p>Also Present:</p> <p>Orson Braithwaite, Videographer</p> <p>Mohamed Al-Darsani, United States Army</p>	<p>1 EXHIBITS (CONTINUED):</p> <p>2 Exhibit 93 E-Mail Chain dated 4-11-22 218</p> <p>3 ARMY-ADS-0000155603-604</p> <p>4 Exhibit 94 E-Mail Chain dated 9-27-21 224</p> <p>5 Attachment</p> <p>6 ARMY-ADS-0000071884-947</p> <p>7 Exhibit 95 E-Mail dated 12-13-22 229</p> <p>8 ARMY-ADS-0000126052</p> <p>9 Exhibit 96 E-Mail Chain dated 11-30-21 248</p> <p>10 Attachment</p> <p>11 ARMY-ADS-0000176297-415</p> <p>12 Exhibit 97 Budget Order Accepted 264</p> <p>13 OMD_000422</p> <p>14 Exhibit 98 Handwritten Notes 295</p> <p>15 (RETAINED BY WITNESS)</p> <p>16 (TO BE ATTACHED)</p> <p>17 Exhibit 99 Solicitation, Offer 308</p> <p>18 and Award</p> <p>19 1-3-17</p> <p>20 ARMY-ADS-0000245462-462_134</p> <p>21 PREVIOUSLY MARKED EXHIBITS:</p> <p>22 Exhibit 63 E-Mail dated 4-25-22</p> <p>Attachment</p> <p>ARMY-ADS-0000329948-970</p> <p>Exhibit 64 E-Mail dated 3-3-22</p> <p>Attachment</p> <p>ARMY-ADS-0000187047-077</p> <p>(Exhibits bound separately.)</p>

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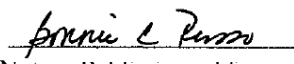
<p style="text-align: right;">Page 6</p> <p>1 PROCEEDINGS</p> <p>2 (9:06 a.m.)</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Good morning.</p> <p>5 We are going on the record at</p> <p>6 a.m. on September 1, 2023.</p> <p>7 Please note that the microphones are</p> <p>8 sensitive and may pick up whispering and</p> <p>9 private conversations. Please mute your phones</p> <p>10 at this time. Audio and video-recording will</p> <p>11 continue to take place unless all parties agree</p> <p>12 to go off the record.</p> <p>13 This is Media Unit 1 of the</p> <p>14 video-recorded deposition of Colonel Lennox</p> <p>15 Morris in the matter of United States, et al.</p> <p>16 versus Google LLC filed in the United States</p> <p>17 District Court for the Eastern District of</p> <p>18 Virginia, Alexandria Division, Case Number</p> <p>19 1:23-cv-00108-LMB-JFA.</p> <p>20 My name is Orson Braithwaite</p> <p>21 representing Veritext Legal Solutions and I am</p> <p>22 the videographer. The court reporter is Bonnie</p>	<p style="text-align: right;">Page 8</p> <p>1 COLONEL LENNOX MORRIS,</p> <p>2 being first duly sworn, to tell the truth, the</p> <p>3 whole truth and nothing but the truth,</p> <p>4 testified as follows:</p> <p>5 EXAMINATION BY COUNSEL FOR DEFENDANT</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Good morning.</p> <p>8 A. Good morning.</p> <p>9 Q. Have you ever been deposed before?</p> <p>10 A. I have not been deposed before.</p> <p>11 Q. Some few basic rules of the</p> <p>12 deposition I wanted to go over with you. Okay?</p> <p>13 A. Okay.</p> <p>14 Q. Please let me finish my question</p> <p>15 before you begin your answer because the court</p> <p>16 reporter cannot transcribe people talking at</p> <p>17 the same time. Okay?</p> <p>18 A. Okay.</p> <p>19 Q. Please provide verbal answers as</p> <p>20 opposed to head nods or uh-huh, uh-uh, which do</p> <p>21 not -- the meanings do not come across on a</p> <p>22 written transcript. Okay?</p>
<p style="text-align: right;">Page 7</p> <p>1 Russo from the firm Veritext Legal Solutions.</p> <p>2 Counsel will now state their</p> <p>3 appearances and affiliations for the record.</p> <p>4 MS. GOODMAN: Martha Goodman from</p> <p>5 Paul Weiss on behalf of Defendant Google LLC.</p> <p>6 MR. McBIRNEY: Jim McBirney from the</p> <p>7 Department of Justice --</p> <p>8 MS. GOODMAN: Sorry.</p> <p>9 MR. McBIRNEY: Oh, I'm sorry.</p> <p>10 MS. GOODMAN: Leah Hibbler, my</p> <p>11 colleague from Paul Weiss on behalf of Google.</p> <p>12 MR. McBIRNEY: Good morning, Jim</p> <p>13 McBirney on behalf of the United States and the</p> <p>14 witness.</p> <p>15 MR. PRITCHETT: Chase Pritchett on</p> <p>16 behalf of the United States.</p> <p>17 MR. CHU: Alvin Chu on behalf of the</p> <p>18 United States.</p> <p>19 MR. AL-DARSANI: Mohamed Al-Darsani</p> <p>20 on behalf of the United States Army.</p> <p>21 THE VIDEOGRAPHER: Thank you. Will</p> <p>22 the court reporter please swear in the witness.</p>	<p style="text-align: right;">Page 9</p> <p>1 A. Understood.</p> <p>2 Q. If you don't understand my question</p> <p>3 please let me know. Otherwise, I will assume</p> <p>4 you understand it. Okay?</p> <p>5 A. Understood.</p> <p>6 Q. Okay. And can you be sure to speak</p> <p>7 up a little bit so that the court reporter and</p> <p>8 everybody in the room can hear you?</p> <p>9 A. Can you hear me?</p> <p>10 Q. Yes.</p> <p>11 A. Okay.</p> <p>12 Q. Is there any reason you are unable</p> <p>13 to provide accurate testimony here today?</p> <p>14 A. There is no reason I am unable to</p> <p>15 provide accurate testimony.</p> <p>16 Q. And what did you -- what did you do</p> <p>17 to prepare for this deposition?</p> <p>18 A. To prepare for this deposition I</p> <p>19 flew here to D.C. from Louisville, met with</p> <p>20 counsel for the government.</p> <p>21 Q. How many times did you meet with</p> <p>22 counsel for the government?</p>

3 (Pages 6 - 9)

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<p>1 have been that time frame.</p> <p>2 Q. Okay. Do you know what other</p> <p>3 providers were being used -- programmatic</p> <p>4 platform providers were being used in the 2021</p> <p>5 time frame?</p> <p>6 A. Not specifically, ma'am.</p> <p>7 Q. Why, to your knowledge, did the</p> <p>8 programmatic investments shift more to the</p> <p>9 Google product in this case to your knowledge?</p> <p>10 MR. McBIRNEY: Object to form.</p> <p>11 THE WITNESS: To the best of my</p> <p>12 knowledge, that change would have been</p> <p>13 consistent with our previous discussions in</p> <p>14 terms of which platforms were the most</p> <p>15 efficient for the army's dollar.</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. So is it accurate to say that the</p> <p>18 army's investment in programmatic display</p> <p>19 advertising shifted more to Google because</p> <p>20 Google was performing better for the army than</p> <p>21 any other programmatic provider?</p> <p>22 MR. McBIRNEY: Object to form.</p>	<p>1 Q. No, I am not.</p> <p>2 A. All right.</p> <p>3 Q. Okay. We tried to print it</p> <p>4 differently, but sometimes instructions get</p> <p>5 lost.</p> <p>6 This is an e-mail you received from</p> <p>7 Kelly Kapshandy on September 24, 2021, correct?</p> <p>8 A. I received this e-mail from Kelly</p> <p>9 Kapshandy, OMD, on September 24, 2021.</p> <p>10 Q. Who is Kelly Kapshandy?</p> <p>11 A. The name is familiar. I can't tell</p> <p>12 you her official title.</p> <p>13 Q. Do you know what role, if any, she</p> <p>14 has with respect to the army's media purchases?</p> <p>15 A. I can't speak to that specifically,</p> <p>16 no.</p> <p>17 Q. And she is attaching a Q3, FY21 MMM</p> <p>18 national paid media quarterly optimization</p> <p>19 tracker, yes?</p> <p>20 A. She has attached MMM follow-up,</p> <p>21 three tabs, MMM optimization tracker, a MMM Q3</p> <p>22 media cost per contract, and an MMM paid media</p>
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<p>1 THE WITNESS: I would maintain my</p> <p>2 answer previously, that the efficiency of that</p> <p>3 platform was more beneficial to the army than</p> <p>4 other channels -- I'm sorry. Than other</p> <p>5 platforms.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And when you say "efficiency," you</p> <p>8 mean the efficiency of Google's programmatic</p> <p>9 platform was more beneficial to the army than</p> <p>10 other programmatic platforms; is that accurate?</p> <p>11 MR. McBIRNEY: Objection. Form and</p> <p>12 asked and answered.</p> <p>13 THE WITNESS: I really don't have a</p> <p>14 change to what I just stated, ma'am.</p> <p>15 MS. GOODMAN: Can I have Exhibit 47.</p> <p>16 (Deposition Exhibit 91 was marked</p> <p>17 for identification.)</p> <p>18 BY MS. GOODMAN:</p> <p>19 Q. I'm handing you Exhibit 91,</p> <p>20 ARMY-ADS-179830 through 179831.</p> <p>21 A. Are you going to ask me to read the</p> <p>22 last page?</p>	<p>1 channel performance by quarter.</p> <p>2 Q. Is this a document that -- a kind of</p> <p>3 document that you would routinely receive from</p> <p>4 somebody at OMD or DDB?</p> <p>5 MR. McBIRNEY: Objection. Vague.</p> <p>6 THE WITNESS: The purpose of this</p> <p>7 document was to have a more simplified visual</p> <p>8 of the quarter-over-quarter changes that we</p> <p>9 executed based on the MMM as opposed to the</p> <p>10 larger decks that we have looked at for the Q4,</p> <p>11 '21 and Q1, '22.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And when you're seeing the more</p> <p>14 simplified visuals of quarter-over-quarter</p> <p>15 changes that were executed based on the MMM,</p> <p>16 does that include the day-to-day, hour-by-hour</p> <p>17 optimizations made by DDB and OMD as well?</p> <p>18 MR. McBIRNEY: Objection.</p> <p>19 Foundation.</p> <p>20 THE WITNESS: This document includes</p> <p>21 the optimizations that were recommended and</p> <p>22 approved by the army in conjunction with the</p>

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<p style="text-align: right;">Page 314</p> <p>1 And, again, we will simply reiterate</p> <p>2 that the 30(b)(6) portion was not prepared to</p> <p>3 start until after 6:00 p.m., and unfortunately,</p> <p>4 the witness was not prepared to go this late</p> <p>5 into the evening, and that was unexpected. But</p> <p>6 that's where we are.</p> <p>7 MS. GOODMAN: And I will also note</p> <p>8 for the record that the witness took an hour</p> <p>9 dinner break when everybody else was prepared</p> <p>10 to move forward into the 30(b)(6) at the</p> <p>11 conclusion of the day.</p> <p>12 MR. McBIRNEY: And I will simply</p> <p>13 note that that is because the witness believed</p> <p>14 that having a dinner break would be helpful for</p> <p>15 his ability to testify.</p> <p>16 Evidently, that has not been how</p> <p>17 things were borne out, but that is why the</p> <p>18 witness had a reasonable dinner hour, asked to</p> <p>19 have dinner before beginning a 30(b)(6) that</p> <p>20 could go as late as three hours longer, which</p> <p>21 at that point would have been 9:00 with no</p> <p>22 food.</p>	<p style="text-align: right;">Page 316</p> <p>1 CERTIFICATE OF NOTARY PUBLIC</p> <p>2 I, Bonnie L. Russo, the officer before</p> <p>3 whom the foregoing deposition was taken, do</p> <p>4 hereby certify that the witness whose testimony</p> <p>5 appears in the foregoing deposition was duly</p> <p>6 sworn by me; that the testimony of said witness</p> <p>7 was taken by me in shorthand and thereafter</p> <p>8 reduced to computerized transcription under my</p> <p>9 direction; that said deposition is a true</p> <p>10 record of the testimony given by said witness;</p> <p>11 that I am neither counsel for, related to, nor</p> <p>12 employed by any of the parties to the action in</p> <p>13 which this deposition was taken; and further,</p> <p>14 that I am not a relative or employee of any</p> <p>15 attorney or counsel employed by the parties</p> <p>16 hereto, nor financially or otherwise interested</p> <p>17 in the outcome of the action.</p> <p>18</p> <p>19 </p> <p>20 Notary Public in and for</p> <p>21 the District of Columbia</p> <p>22 My Commission expires: August 14, 2024.</p>
<p style="text-align: right;">Page 315</p> <p>1 MS. GOODMAN: Well, I offered you</p> <p>2 snacks, as you recall, and the snacks are here</p> <p>3 in the room, including Kind bars and popcorn</p> <p>4 and Zbars and some super foods called almonds</p> <p>5 and cashews and peanuts.</p> <p>6 MR. McBIRNEY: Let the record</p> <p>7 reflect that I am noticing for the first time,</p> <p>8 as flagged by counsel, that there Zbars,</p> <p>9 peanuts, and snacks characterized by counsel as</p> <p>10 "super foods" of some sort.</p> <p>11 MS. GOODMAN: All right.</p> <p>12 THE VIDEOGRAPHER: The time is</p> <p>13 p.m. we are off the record.</p> <p>14 (Whereupon, the proceeding was</p> <p>15 adjourned at 7:56 p.m.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 317</p> <p>1 Jimmy McBirney Esq</p> <p>2 jimmy.mcbirney@usdoj.gov</p> <p>3 September 6th, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 9/1/2023, Lennox Morris (#6074135)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 (erratas-cs@veritext.com).</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>